IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.9 of 1993
Date of decision:21.11.2006

The Commissioner of Income tax, Jalandhar

....Petitioner

versus

M/s. Vadhbag Paper and Board Mills Pvt. Limited, Nawanshahr

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal'), arising out of its order dated 30.8.1990 in ITA No.1210(ASR)/1989, for the assessment year 1984-85:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has been in error in holding that it was not a fit case for levying the penalty for late filing under section 271(1)(a) of the Income Tax Act, 1961 in respect of assessment year 1984-85?"

The assessee filed its return for the assessment year 1984-85 on 5.11.1986 showing loss, adjustable against brought forward losses of earlier years. For the earlier years, the assessee had claimed deduction 80-J of the Income Tax Act, 1961 (for short, 'the Act') which was not allowed and taxable income was determined by adjusting the carry forward losses.

The Assessing Officer initiated penalty proceedings against the assessee for delay in filing the return for the year 1984-85 and rejected the explanation that the assessee had not filed return as in the return for the earlier years, the assessee had claimed loss, if claim under section 80-J of the Act was allowed. Since the said claim was disallowed, the assessee filed

return.

The CIT(A) dismissed the appeal but directed that the penalty be re-computed. Accordingly, penalty of Rs.29,255/- was computed.

The Tribunal upheld the plea of the assessee that the assessee was not required to file any return of loss and, thus, there was reasonable cause for late filing the return.

We have heard learned counsel for the revenue and perused the findings recorded.

The finding of the Tribunal in paras 9 and 10 of its order that the assessee had reasonable cause for late filing of the return and case for levy of penalty was not made out, cannot be held to be perverse, for the reason that when the assessee was to file the return, he could not visualise that deduction claimed under section 80J of the Act for the previous years will be disallowed. Once it is so, the conclusion of the Tribunal cannot be held to be erroneous.

In view of the above, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 21,2006
'gs'

(Rajesh Bindal)
Judge